RALPH AND BEVERLY EASON

v.

BUREAU OF LAND MANAGEMENT

IBLA 99-278 Decided September 27, 1999

Appeal of a decision by Administrative Law Judge Harvey C. Sweitzer, dismissing an appeal of a decision by the Bureau of Land Management, Jordan Resource Area Manager, Vale, Oregon, District Office, apportioning temporary nonrenewable livestock grazing rights. OR-036-98-2.

Affirmed.

1. Administrative Procedure: Generally--Res Judicata--
Rules of Practice: Appeals: Generally

A party who has availed himself of the opportunity to obtain administrative review of a decision within the Department is precluded from relitigating the matter in subsequent administrative proceedings and the Board will not revisit matters previously adjudicated without a showing of compelling legal or equitable reasons.

APPEARANCES: W. Hugh O'Riordan, Michael C. Creamer, and Thomas E. Dvorak, Boise, Idaho, for appellants; Elaine Y. Sielinski, State Director, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Ralph and Beverly Eason (appellants or Easons) have appealed from a February 25, 1999, order of Administrative Law Judge (Judge) Harvey C. Sweitzer granting a Motion to Dismiss filed by the Bureau of Land Management (BLM), in the Easons' appeal from the Vale District Manager's decision dated November 6, 1998. Before Judge Sweitzer, appellants alleged that, in addition to temporary grazing rights allocation based upon their active Class I grazing privileges, they are also entitled to temporary nonrenewable grazing rights based upon a grazing allocation of 1,400 animal unit months (AUM's) they received as the result of a 1973 Agreement with BLM in which they exchanged certain water rights for grazing rights. Judge Sweitzer's February 25, 1999, order determined the Easons' appeal raises

issues previously decided against the Easons by this Board in two recent appeals, Ralph and Beverly Eason v. Bureau of Land Management, 145 IBLA 78 (1998), and Ralph and Beverly Eason v. Bureau of Land Management, IBLA 99-84 (Order dismissing appeal dated January 21, 1999). We concur and affirm Judge Sweitzer's dismissal.

As Judge Sweitzer found, this appeal is squarely governed by Ralph and Beverly Eason v. BLM, supra, and by the reasoning set forth in our January 1999 order. In that order, we stated:

> In Ralph and Beverly Eason v. BLM, * * * [supra], decided July 16 1998, this Board affirmed in part as modified, vacated in part, and reversed in part an April 22, 1994, Decision * * * by Administrative Law Judge * * * Harvey Sweitzer affirming a May 30, 1984, Decision by * * * BLM that apportioned responsibility for maintenance of range improvements within the Jackies Butte Summer Allotment based upon licensed active preference.
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> The * * * Decision of the Board affirmed that portion of Judge Sweitzer's 1994 decision that determined that the 1,400 * * * AUMs provided Appellants by BLM in exchange for use of Appellants' water were not Class I AUMs. In affirming Judge Sweitzer's determination concerning the nature of the AUMs, the Board modified that 1994 finding * * * in only one respect, by striking one sentence in his Decision which conditioned the award of additional AUMs to the Easons to the aliquot reduction in the number of AUMs provided other grazers. Id. at 98. We affirmed his determination concerning the nature of the 1,400 AUMs otherwise.
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> In that part of Judge Sweitzer's 1994 Decision we affirmed, Judge Sweitzer described the nature of the 1,400 AUMs in terms of allocating any future increases in available forage. He stated:
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> > The presence of a much increased Class I preference would potentially be of great importance to the Easons if BLM were to distribute any future surplus forage in the allotment to the existing permittees based upon their proportionate share of the Class I preference. However, there is no evidence that the Easons, prior to entering into the agreement, contemplated or discussed the prospect that their 1,400 AUMs would be considered as preference in allocating any future incresases in available forage.
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> (1994 Decision at 9.)
>
> Thus, Judge Sweitzer found that the 1973 Agreement did not provide Appellants with a preference entitling them to a

> proportionate share in any increases in available forage based upon the 1400 AUMs acquired in exchange for their water rights.

(January 21, 1999, Order at 1-2.)

[1] As a general rule, the principle of administrative finality, the administrative counterpart of the doctrine of res judicata, precludes reconsideration of matters resolved finally for the Department in an earlier appeal. Richard and Lulu Taylor, 139 IBLA 236, 241-242 (1997); Mary Sanford, 129 IBLA 293, 298 (1994). The doctrine of administrative finality dictates that once a party has availed himself of the opportunity to obtain administrative review of a decision within the Department, the party is precluded from litigating the matter in subsequent proceedings except upon a showing of compelling legal or equitable reasons. Gifford H. Allen, 131 IBLA 195, 202 (1994). Therefore, we will only review the appeal to determine whether the Easons have shown compelling legal or equitable reasons which justify relitigation of the matter.

In their Statement of Reasons on appeal, appellants claim that Judge Sweitzer's order is contrary to our decision in Ralph and Beverly Eason, supra at 98, in which we stated that the 1,400 AUM's granted by the 1973 Agreement hold attributes in common with Class I AUM's, as well as additional valuable attributes. Appellants have taken this language out of context, and interpret it as equivalent to a holding that the 1,400 AUM's are in fact Class I AUM's. This interpretation is in fact contrary to our holding that the AUM's are not Class I AUM's because, inter alia, they are in no way related to a base property holding. Ralph and Beverly Eason held that the 1,400 AUM's granted by the 1973 Agreement are more like exchange of use than Class I AUM's but, at any rate, their terms are governed solely by the 1973 Agreement. 1/

Appellants claim that 1995 changes to the grazing regulations broaden exchange of use AUM's to "permitted" status, and that, as such, their 1,400 AUM's are entitled to BLM's consideration when allocating temporary nonrenewable grazing privileges. In addressing this argument, Judge Sweitzer held:

> Given the clear pronouncements of the Board that the 1973 Agreement does not entitle Appellants to a proportionate share of any increases in available forage based upon the 1,400 AUMs, the implication of Appellants' argument is that the 1995 amendment of the regulation granted them new rights under the 1973 Agreement.
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> This implication is rejected. The Agreement, as interpreted by the Board, defines the rights of the parties

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1/ As was pointed out in Ralph and Beverly Eason, supra at 89-91, the 1973 Agreement was finalized before the current regulatory scheme for grazing came into existence.

> thereunder. The amendment of the regulation should not be interpreted as altering those rights or the bargain which the parties made.

(February 25, 1999, Order at 3.) 2/

Judge Sweitzer's order could not be clearer. The 1973 Agreement between BLM and the Easons was a negotiation based upon the purchase, on the part of the Government, of water rights owned by the Easons for the consideration of 1,400 AUM's. The consideration given for the right obtained cannot now be unilaterally expanded by appellants based upon considerations that could have been negotiated at the time, but were not.

We find that the Easons have shown no compelling legal or equitable reasons which justify relitigation of the matter. We therefore affirm Judge Sweitzer's February 25, 1999, order dismissing the Easons' appeal.

James P. Terry
Administrative Judge

I concur:

Robert W. Mullen
Administrative Judge

2/ The order continues by rejecting appellants' assertion that the 1,400 AUM's qualify as "permitted" AUM's, as they resulted from a side agreement between the Easons and BLM, and are not allocated "under a permit or lease," as the definition of "permitted use" requires. See 43 C.F.R. § 4100.0-5.